IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO. 168 OF 2003

CBI, ACB, Mumbai..... ....Applicant.

Versus

Marutkumar Lalit Pandya & Anr.. .... Respondents.

Mr. A.D.Kango with Mr. J.C.Satpute
for the Applicant.

Mr. D. P. Adsule, APP for State.

CORAM : V.R. KINGAONKAR, J.

DATED : 21ST APRIL, 2006.

P.C.:

This revision application can be conveniently disposed of by directing the learned Sessions Judge for Greater Mumbai, to reconsider the request for discharge.

2. On behalf of the Applicant, it is pointed out that previously this Court by its order dated 27th November, 2002 was required to set aside the order of discharge whereby original Accused No.2 came to be discharged as Accused in Special Case No. 38 of 1996. This Court pointed out that some of the original

copies of the official correspondence were also found at the residence of Respondent No.1 i.e. original Accused No.2 and as such there was certain material available on record. The impugned order reveals that the Special Judge failed to consider the relevant observation of this Court and granted the application for discharged of Accused No.2 - Marutkumar Lalit Pandya, for the reasons that the State has not produced original confessional statements of Accused Nos.1 and 4 and moreover "there is no convincing material to make out any grave suspicion against Applicant / Original Accused No.2".

3. While considering application for discharge of Accused, it is essential to delve into the records only to see whether there is absence of material regarding culpability of the Accused. If there is some material, which may not be sufficient to reach the conclusion of guilt, but is sufficient to frame charge then the trial Court is required to proceed further and frame charge. It appears that the learned Special Judge had not considered scope of Section 354 of the Criminal Procedure Code while passing the impugned order. It appears from the impugned order that the State sought to rely upon confessional

statements of original accused No.4 - Billa Singh and Accused No.1 - Anant Laxman Murthy in order to implicate Accused No.2 - Marutkumar Pandya. Merits of such confessional statements could be considered in view of Section 10 of the Evidence Act and the learned Special Judge was required to have horizontal view of the evidence available on the record.

4. Considering the fact that earlier observations of this Court are not taken into account by the learned Special Judge, the impugned order is unsustainable. The revision is, therefore, allowed. The order of discharge of Accused No.2 - Marutkumar Pandya is set aside and the learned Sessions Judge is directed to reconsider the application for discharge.

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